

RECOMMENDATION 1:

Maintain civil service protections against political influence in the selection of qualified state classified employees; redefine mission statement (KRS 18A.010(1)) to include strong and clear directive; clarify prohibitions against political discrimination within KRS 18A.140(1).

ACTION REQUIRED: Statutory change to amend to KRS 18A.010(1) to include the directives of KRS 18A.140(1).

PROPOSED AMENDMENT - Representative Cherry. Maintain civil service protections against political influence in the selection of qualified state classified employees **and for existing merit employees**; redefine mission statement (KRS 18A.010(1)) to include strong and clear directive; clarify prohibitions against political discrimination within KRS 18A.140(1).

RATIONALE: The proposed amendment would include existing state employees in the protections against political influence.

PROPOSED AMENDMENT – Selection Subcommittee. Add the following sentence at the end of recommendation one. “The Merit Task Force recognizes the continuing deleterious effects of political patronage upon the effectiveness of the Merit System and makes the following sub-recommendations in order to institute further safeguards against illegal merit job decisions based upon political patronage:”

Sub-recommendation A: Mandatory and reported training every year for appointing authorities, appointing authority designees, and non-merit appointments (Director level and above) concerning the mission of KRS Chapter 18A and prohibitions against political hiring.

Action required: Statutory and regulatory changes.

Sub-recommendation B: Along with Recommendation 1 regarding mandatory and reported training, provision for a signed certification by appointing authorities, appointing authority designees, or any person involved in employment decisions of merit employees that political consideration may not enter into personnel decisions for state classified positions (includes potential for job termination in the event of violation of the prohibition); See attached sample certification.

CERTIFICATION

With respect to all state classified jobs that are not exempt from the classified state service under KRS Chapter 18A, all state employees are strictly prohibited from directly or indirectly:

- (1) Conditioning, basing, or knowingly prejudicing or affecting any term or aspect of state employment of an existing state classified employee, upon or because of any political reason or factor;
- (2) Affecting the hiring of any individual as a state classified employee because of any political reason or factor.

Political considerations may not enter, in any manner whatsoever, into personnel decisions for state classified positions.

I certify that I am aware of and am in full compliance with the above stated prohibitions regarding personnel decisions by the Commonwealth of Kentucky. I certify, under penalty of perjury, as provided for by law, that, to the best of my knowledge, political considerations did not enter into the employment actions documented herein. I understand that failure to comply with the above prohibitions may result in disciplinary action up to and including immediate termination.

Signature

Printed Name

Date

Action required: Statutory and regulatory changes

Sub-recommendation C: Provision that the Secretary of the Personnel Cabinet upon consultation with the appointing authority shall take steps to remove such person already appointed if the hiring decision was based solely or in large part upon pre-selection because of politics or patronage and not merit and fitness.

Action required: Addition to KRS 18A.032 (1)

Sub-recommendation D: Mandatory controls within the Personnel Cabinet to communicate prohibitions against employment decisions based on politics or patronage to all state work force and Cabinets;

Action required: See KRS 18A.030(2)(g), (h), and (i); the Personnel Cabinet has existing authority to make investigations concerning all matters touching the enforcement and effect of the provisions of KRS

Chapter 18A and its regulations, but the Personnel Cabinet needs to take a more active leadership role than in the past concerning this issue by preparing and implementing employee training and other safeguards in the selection and employment process. Statutory and regulatory changes to address political interference as a separate issue to communicate to all merit and unclassified system.

Sub-recommendation E: The Personnel Cabinet under its authority in KRS 18A.015(5) should take an active role in seeking and accepting grants or contribution, federal or otherwise, to assist in meeting the costs in carrying out the purpose of KRS Chapter 18A, which would include seeking grants for training for providing a system of safeguards protecting the state merit system against political patronage or interference.

Action required: KRS 18A.015(5) and any other statutory and regulatory changes.

Sub-recommendation F: The Personnel Cabinet under its authority in KRS 18A.025, in particular (3)c, require its Division of Communications and Recognition to better communicate on an on-going basis with state employees about this important issue and establish internal controls, such as a reporting system (including anonymous complaints), to safeguard against politics or patronage involvement within the merit system.

Action required: KRS 18A.025 and any other statutory and regulatory changes.

Sub-recommendation G: The Personnel Board under its existing authority in KRS 18A.075 should take a more active leadership role than in the past in promoting public understanding of merit principles in government service, making annual reports to the General Assembly (including a mandatory report about this important issue), and representing the public interest in the improvement of personnel administration in the state service (including fostering the interest of institutions of learning and of civic, professional, and employee organizations in the improvement of personnel standards in the state service);

Action required: KRS 18A.075 and any other statutory and regulatory changes

Sub-recommendation H: Examine KRS 18A.125 (control through payroll certification) for use as a safeguard;

Action required: KRS 18A.125 and any other statutory and regulatory changes.

Sub-recommendation I: Examine KRS 18A.140 (prohibition against discrimination and political activity) for enhancement as to this issue);

Action required: Statutory and regulatory changes

Sub-recommendation J: Need to identify required job criteria for impartial and fair applicant screening;

Action required: Statutory and regulatory changes

Sub-recommendation K: General Assembly oversight with ombudsman; program review and investigation; yearly reporting by both Personnel Board and Personnel Cabinet specifically on this issue and progress made toward eliminating the ill effects of patronage on the merit system.

Action required: Statutory and regulatory changes

Sub-recommendation L: Establishment of a state panel for oversight as to patronage issues and effect upon the state merit system.

Action required: Statutory and regulatory changes

Sub-recommendation M: The Office Merit System Referral which was created by Executive Order #_____ be made a permanent office with refined job responsibilities.

Action required: Statutory and regulatory changes

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RECOMMENDATION 2:

The Selection Sub-committee recommends adoption of the proposals contained within the “Proposed Future Hiring Processes” from the Personnel Cabinet dated September 2005, with the exception of the need for a clarification of the proposal under “C – Register” concerning “eliminating registers for career path promotions and promotions”. The Sub-committee recommends maintaining an employee promotion system that provides career path opportunities through families of job classes based on merit, experience, excellent performance and evaluation. This provides for the capability for internal promotions without requiring external competition. This change will actually enhance the ability of a classified employee to promote within the existing system. A need exists for promulgation of a comprehensive Personnel Board regulation that defines process, procedure, and implementation. (101 KAR 1:400 merely reiterates the statutory requirements without any guidance for agency implementation). “Seniority” as defined in KRS 18A.005(35) for an internal promotion shall not be a controlling factor.

ACTION REQUIRED: Statutory and Regulatory changes

RECOMMENDATION 3:

To increase efforts for recruiting and hiring qualified veterans, minorities, women, and disabled.

ACTION REQUIRED: Statutory changes

RECOMMENDATION 4:

Request Personnel Cabinet to study the feasibility of establishing a comprehensive regulation for implementing procedures regarding background checks, including but not limited to NCIC checks, and employment references for all executive branch applicants.

ACTION REQUIRED: Personnel Cabinet study and possible statutory and regulatory changes

RECOMMENDATION 5:

Establish a process of ongoing review of the merit system and make recommendations regarding the merit system including a comprehensive review and update of KRS 18A and KAR 101. The review and update should be focused on providing definitions for terms used throughout KRS 18A and KAR 101. The review and update should also clarify any inconsistencies in the law including vague language subject to differing interpretation. The update should make the law governing the merit system user friendly and understandable and include a review of previous recommendations that have not been

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implemented. After the initial review and update, there should be an annual review and report.

ACTION REQUIRED: Policy Change

RECOMMENDATION 6:

It is recommended that “burrowing,” the act of switching from a non-merit position to a merit position late in an administration to get special merit protections, be limited by statute for those without reversion rights under 18A.005 by increasing the probation period to one year.

ACTION REQUIRED: Statutory Change

PROPOSED AMENDMENT– Representative Cherry.

Amend KRS 18A.111 as follows:

- (1) Except when appointed to a job classification with an initial probationary period in excess of six (6) months, and except as provided in KRS 18A.005 **and this section**, an employee shall serve a six (6) months probationary period when he is initially appointed to the classified service. An employee may be separated from his position, reduced in class or rank, or replaced on the eligible list during this initial probationary period and shall not have a right to appeal, except as provided by KRS 18A.095. The employee may be placed on an eligible list but shall not be certified to the agency from which he was separated unless that agency so requests. Unless the appointing authority notifies the employee prior to the end of the initial probationary period that he is separated, the employee shall be deemed to have served satisfactorily and shall acquire status in the classified service.
- (2) An employee who satisfactorily completes the initial probationary period for the position to which he was initially appointed to the classified service shall be granted status and may not be demoted, disciplined, dismissed, or otherwise penalized, except as provided by the provisions of this chapter.
- (3) An employee ordered reinstated by the board shall not be required to serve a probationary period unless the board rules otherwise.
- (4) An employee with status, who has been promoted, shall serve a promotional probationary period of six (6) months, except for those employees granted leave in excess of twenty (20) consecutive work days during this period.

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Such probationary periods shall be extended as prescribed in KRS 18A.005. During this period, he shall retain the rights and privileges granted by the provisions of this chapter to status employees.

(5) An employee with status may request that he be reverted to a position in his former class at any time during the promotional probationary period.

(6) A laid-off employee who accepts a bona fide written offer of appointment to a position shall not be required to serve an initial probationary period. He shall be an employee with status and shall have all rights and privileges granted employees with status under the provisions of this chapter.

(7) A former unclassified employee under the provisions of paragraphs (d), (e), (f), (g), (h) and (i) of KRS 18A.115 shall serve an initial probationary period of twelve (12) months if the employee is appointed to a position in the classified service unless that employee had previously had status in the classified service or had been separated from his or her previous unclassified position for at least one hundred and eighty (180) days prior to the effective date of his or her appointment to the classified service.

RATIONALE: Concur with the intent of this recommendation, and believe that the proposed amendment would more specifically address that intent. Furthermore, the language in the proposed amendment cleared the House in 2004 on a nonpartisan 95-1 vote.

RECOMMENDATION 7:

KRS 18A.990, the penalty section of the civil service law, should be amended to apply to the traditionally criminal acts set out in KRS 18A.145. As currently written, the broad application of penalties to all acts within KRS 18A.005 through 18A.200 criminalizes such actions as the failure to maintain accurate records (i.e. KRS 18A.015); failure to document employee misconduct (i.e. KRS 18A.020); or the failure of the Secretary to attend all meetings. This overbroad reach of the statute trivializes the protections from criminal acts, by not distinguishing them from the day to day activities of the Commonwealth, including decisions concerning employment. Furthermore, it is recommended that acts of discrimination outlined in KRS 18A.140 be subject to civil penalties including fines and prohibition of future civil service when the board determines circumstances warrant referral to the Attorney General for enforcement of these civil penalties.

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ACTION REQUIRED: Statutory Change

PROPOSED AMENDMENT – Representative Cherry. Amend KRS 18A.990 as follows:

(1) Any person who willfully violates any provision of KRS 18A.005 to 18A.200 *other than KRS 18A.145, KRS 18A.140 (1), or KRS 18A.140 (2)* ~~[or of the rules]~~ shall be guilty of a misdemeanor, and shall upon conviction be punished therefor with a sentence of from thirty (30) days to a maximum of six (6) months in jail.

(2) Any person who is convicted of a misdemeanor *or a felony* under KRS 18A.005 to 18A.200 shall, for a period of five (5) years, be ineligible for appointment to or employment in a position by the Commonwealth, and if he is an officer or employee of the Commonwealth, shall forfeit his office or position.

(3) Any *person* ~~[officer or employee of the classified service]~~ who willfully violates *KRS 18A.145, KRS 18A.140 (1), or KRS 18A.140 (2)* ~~[any of the provisions of KRS 18A.140 shall forfeit his office or position, and for one (1) year shall be ineligible for any office or position in the Commonwealth's service. Violation of KRS 18A.140]~~ shall constitute a *felony* ~~[misdemeanor]~~ subject to a sentence of from *one (1) year to a maximum of five (5) years in the penitentiary* ~~[thirty (30) days to a maximum of six (6) months in jail]~~.

RATIONALE: (Included with the concurrence of the amendment sponsor, Mr. Fontaine Banks). It is imperative that the Merit System Task Force does not weaken, or even be perceived as weakening, the merit system safeguards. Strengthening the penalties for violation of KRS 18A.140 (1) and (2), and KRS

Recommendation 7 - continued

18A.145 would increase the integrity of public employment, and demonstrate the commitment of the Task Force to the many state employees who depend on these laws to protect them from political pressure and retaliation.

PROPOSED MODIFICATION - John Brown, III. Propose modifying this recommendation by deleting the final sentence beginning with “Furthermore” and ending with “penalties.” I agree with decriminalizing purely administrative acts within KRS 18A.005 through 18A.200, but not with including KRS 18A.140 as part of the decriminalization.

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RECOMMENDATION 8:

As presently enacted, KRS 18A.040 requires that "... rules, regulations and practices meeting merit system standards shall, where such standards apply as a prerequisite for federal grants-in-aid, be in effect continuously, notwithstanding any other provision of KRS 18A.005 to 18A.200. "The federal guidelines are set forth in 41 CFR 60 at pages 121-148. As stated, the purpose of the guidelines is to "incorporate a single set of principles which are designed to assist employers, labor organizations, employment agencies, and licensing and certification boards to comply with requirements of Federal law prohibiting employment practices which discriminate on grounds of race, color, religion, sex, and national origin." The guidelines' focus is upon the procedures prospective employers utilize in making employment decisions regarding all aspects of the employment relationship. A procedure which has an adverse impact upon the employment relationship of any protected class is deemed discriminatory and in violation of the federal regulations.

This statutory attempt to ensure compliance with federal regulation creates potential conflicts with regard to selection and affirmative action. Changes to selection procedures of employees must be in compliance with federal guidelines set forth in 41 CFR 60. While it is not mandated, federal regulations allow for the establishment of voluntary affirmative action programs. After reviewing KRS 18A, it is apparent that if the Commonwealth utilizes a person's race, religion, sex or national origin as a factor in selecting an employee, it would be in violation of state law as currently written. Therefore, the current statutes should be amended to clearly permit an affirmative action program.

ACTION REQUIRED: Statutory and Regulatory Change

RECOMMENDATION 9:

Since both the Personnel Cabinet and the Personnel Board have the authority to promulgate regulations with regard to personnel matters, topic areas that are under the purview of each should be clarified and distinguished.

ACTION REQUIRED: Statutory and Regulatory Change

RECOMMENDATION 10:

Adopt procedures to encourage resolution of personnel issues at the agency level prior to going before the Personnel Board.

ACTION REQUIRED: Statutory and Regulatory Change

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PROPOSED AMENDMENT – Representative Cherry.
Combine with Recommendation 14. Use as lead sentence in Recommendation 14, and change the first word “make” to “making” in Recommendation 14.

RATIONALE: While concurring in the intent of this Recommendation, it may be more clearly addressed by Recommendation 14.

RECOMMENDATION 11:

The reporting requirements in KRS 18A.030 should be reviewed for relevance and usefulness in providing meaningful oversight.

ACTION REQUIRED: Statutory Change

RECOMMENDATION 12:

Final written decisions of the Personnel Board should be made available for review electronically, organized by the statutory basis for appeal.

ACTION REQUIRED: Change in Personnel Board Practice

PROPOSED AMENDMENT – Representative Cherry.
Combine with Recommendation 15.

RATIONALE: Consolidating with Recommendation 15 will keep all recommendations relating to the operations of the Personnel Board in one recommendation.

RECOMMENDATION 13:

The following technical changes to KRS 18A should be made:

- Change “commissioner” to “secretary” in 18A.037 and 18A.040. These are apparent oversights from reorganization legislation.
- Update the citation in 18A.043 for the Federal Drug Free work place to read "41 USCA § 707 et seq."

ACTION REQUIRED: Statutory Change

RECOMMENDATIONS 14:

Make a progression of options available for merit employees to address work-related complaints or disciplinary actions. At the beginning of the process, the employee may

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choose between filing a grievance, or requesting mediation where the agency is required to participate. If mediation is unsuccessful, or the grievance procedures fail to address the employee's concerns to his satisfaction, the employee may have his concern heard by a peer review committee (to be established according to Personnel Cabinet guidelines). If the peer review committee action fails to address the employee's concerns to his satisfaction, the employee may appeal the decision of the peer review committee to the Personnel Board.

Require the Personnel Board to monitor all grievances and mediations filed. This additional duty, along with information showing that the Personnel Board is underfunded in its implementation of existing statutory duties, makes it necessary to recommend that the Personnel Board be properly funded to perform all of its duties, both old and new.

ACTION REQUIRED: Statutory and Regulatory Changes

RECOMMENDATION 15:

Require the Personnel Board members to be subject to the Executive Branch Ethics Code, and require the Board to report annually to the State Government Committee. In their annual report, the Board should address the following:

- a. the number of merit state employees at the beginning and end of the reporting period;
- b. the number of grievances filed and mediation requests made by merit employees during the reporting period;
- c. a tabulation of the types of grievances filed during the reporting period – suspension, fine, demotion, dismissal, discrimination, job conditions, or other penalization;
- d. a tabulation of the types of mediation requests filed during the reporting period -- suspension, fine, demotion, dismissal, discrimination, job conditions, or other penalization;
- e. a comparison of the number of grievances and mediations filed by merit employees in previous reporting periods, including a comparison in the categories listed above;
- f. a tabulation of the stages in which employee complaints were resolved during the reporting period;
- g. the average amount of time taken to resolve employee complaints during the reporting period, by stage;
- h. a comparison of the amount of time taken to resolve employee complaints during the reporting period, by stage, and the amount of time taken during the previous reporting periods.

ACTION REQUIRED: Statutory Change

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RECOMMENDATION 16:

Allow agencies to place employees on paid leave during the interim between issuance of an intent to dismiss letter and the date whereby the Cabinet Head, Agency Head or his designee determines whether to dismiss, alter, modify or rescind the intent to dismiss.

ACTION REQUIRED: Statutory and Regulatory Changes

PROPOSED AMENDMENT – Representative Cherry.

Allow agencies to place employees on paid leave during the interim between issuance of an intent to dismiss letter and the effective date of the agency's final action [whereby the Cabinet Head, Agency Head or his designee determines whether to dismiss, alter, modify or rescind the intent to dismiss].

RATIONALE: Without amendment, the time period between the date the employer makes his determination of “whether to dismiss, alter, modify, or rescind the intent to dismiss,” and the effective date of that determined action would not be covered.

RECOMMENDATION 17:

Implement a drug testing program for Executive Branch employees to include post offer/pre-employment drug testing, reasonable suspicion drug/alcohol testing, and random drug/alcohol testing.

ACTION REQUIRED: Statutory and Regulatory Changes

PROPOSED AMENDMENT – Representative Cherry.

Explore the feasibility of implementing [implement] a drug testing program for Executive Branch employees in accordance with Fourth Amendment parameters, to include postoffer/pre-employment drug testing, reasonable suspicion drug/alcohol testing, and random drug/alcohol testing.

RATIONALE: Due to the complexity of drug testing laws for public employers, it appears that further studies are needed that would be outside the parameters of this Task Force in order to recommend that such a program be implemented.

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PROPOSED MODIFICATION - John Brown, III. Propose modifying this recommendation by dropping “and random drug/alcohol testing.”

RECOMMENDATION 18:

Amend KRS 61.394 to enhance state employee paid military leave benefit to a maximum of twenty-one (21) calendar days from the current maximum of fifteen (15) calendar days. Allow any unused days in a federal fiscal year to be carried over to the following year. [Adding an additional week of paid leave and allowing service members to roll over unused weeks to the following year would enhance current benefits in parity with those benefits enjoyed by civil service employees in the federal government.]

ACTION REQUIRED: Statutory and Regulatory Changes

PROPOSED AMENDMENT – Representative Cherry.
Amend KRS 61.394 to enhance state employee paid military leave benefit to a maximum of twenty-one (21) calendar days from the current maximum of fifteen (15) calendar days. Allow any unused days in a federal fiscal year to be carried over to the following year. [Adding an additional week of paid leave and allowing service members to roll over unused weeks to the following year would enhance current benefits in parity ~~parody~~ with those benefits enjoyed by civil service employees in the federal government.]

RATIONALE: To correct typographical error.

RECOMMENDATION 19:

Adopt one state leave request form for KRS 18A employees that would cover all types of leave: annual, sick, Family and Medical Leave, compensatory, military, voting, special, adverse weather, and blood donation. [This modification will allow a uniform approach to employee leave, and align the leave request form with the uniform state timesheets already in use.]

ACTION REQUIRED: Regulatory Change

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RECOMMENDATION 20:

Conduct a disparity study of Executive Branch employees to determine if there is a disparity between the qualified work force of Kentucky citizens in protected classes, and Executive Branch employees in protected classes. The study should break down the numbers for each job category. [Implementation would require the Personnel Cabinet to request appropriate funding through the budgetary process.]

ACTION REQUIRED: Executive Branch Action

RECOMMENDATION 21:

Update the State Affirmative Action Plan consistent with federal requirements and industry best practices. The updated Affirmative Action Plan should provide tools to state agencies to assist them with reaching affirmative action goals established in the plan. The updated Affirmative Action Plan should contain provisions for accountability of agencies in the form of penalties for those agencies that do not make progress toward affirmative action goals and rewards for those agencies that make progress toward affirmative action goals.

ACTION REQUIRED: Executive Order and Statutory Change

RECOMMENDATION 22:

Require mandatory training regarding diversity and the updated Affirmative Action Plan to managers and other individuals making hiring decisions. The training should include emphasis on ways to reach affirmative action goals and established accountability provisions.

ACTION REQUIRED: Executive Order

RECOMMENDATION 23:

Seek a reduction in the number of classifications of between 40 and 60 percent.

- Currently there are 1,657 classifications and 708 of them have no more than five employees.
- There are 200 inactive classifications.
- Many classifications are specific to one cabinet and should be broader.

ACTION REQUIRED: Administrative

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RECOMMENDATION 24: Maintain an annual increment in conjunction with the establishment of a minimum, mid and maximum pay grade for each salary.

- Pursue a current market survey and anticipate annual adjustments to the minimum, mid and maximum pay grades.
- When maximum salary conflicts with annual increment, consider alternate methods to award annual increments, for example lump sum payments.
- Further evaluate use of ACE and ERA awards.
- Consider impact of the establishment of maximum salary on long-term, senior employees to ensure they are not inadvertently hurt as they approach retirement.

ACTION REQUIRED: Legislative Consideration, Administrative

RECOMMENDATION 25: Train supervisors for employee evaluation.

- Use of evaluation process as a compensation for performance standard.
- Possibly use of outside consultant for selection of best practice methods.

ACTION REQUIRED: Administrative

RECOMMENDATION 26: Facilitate implementation of an optional 40-hour work week. Compensate employees for additional time.

ACTION REQUIRED: Legislative Consideration, Administrative

PROPOSED NEW RECOMMENDATION – Representative Cherry:

Amend KRS 18A.140 as follows:

18A.140 Prohibition against discrimination and political activities.

(1) No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified services because of his political or religious opinions or affiliations or ethnic origin or sex or disability. No person over the age of forty (40) shall be discriminated against because of age.

(2) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for

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any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person.

(3) No employee in the classified service or member of the board or its executive director or secretary shall, directly or indirectly, pay or promise to pay any assessment for political purposes, or solicit or take any part in soliciting for any political party, or solicit or take any part in soliciting any political assessment, subscription, contribution, or service. No person shall solicit any political assessment, subscription, contribution, or service of any employee in the classified service.

(4) No employee in the classified service or member of the board or its executive director shall be a member of any national, state, or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any partisan public office, or shall take part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote. Officers or employees of the classified service may be candidates for and occupy an elective office ~~[a town or school district office if the office is one for which no compensation, other than a per diem payment, is]~~ provided that ~~[and]~~ the election is on a

New Recommendation - continued

nonpartisan basis, the officers or employees have complied with the requirements of KRS 61.080, and the duties of the elective office do not interfere with the state duties of the officer or employee in the classified service.

RATIONALE: This will allow state merit employees to run for, and be elected to, nonpartisan public office.